

## Message Text

CONFIDENTIAL

PAGE 01 BERN 01717 220818Z  
ACTION L-03

INFO OCT-01 EUR-12 IO-13 ISO-00 SCS-03 SCA-01 DHA-02  
SS-15 NSC-05 SP-02 H-01 PRS-01 PA-01 USIA-06  
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R 211700Z APR 77  
FM AMEMBASSY BERN  
TO SECSTATE WASHDC 4232  
INFO USMISSION GENEVA  
AMCONSUL ZURICH

C O N F I D E N T I A L BERN 1717

GENEVA FOR CONSUL

EO 11652: GDS  
TAGS: PINT, SZ  
SUBJ: SWISS GOVT WILL NOT PERMIT FOREIGNERS TO VOTE BY MAIL IN  
THEIR RESPECTIVE NATIONAL ELECTIONS

1. SUMMARY: IN RESPONSE TO SPANISH EMBASSY REQUEST  
ON APR 4 FOR CLARIFICATION OF SWISS GOVT POSITION WITH  
RESPECT TO ABSENTEE VOTING IN SPANISH PARLIAMENTARY  
ELECTIONS THIS COMING JUNE BY ESTIMATED 70,000 ELIGIBLE  
SPANISH VOTERS RESIDENT IN SWITZERLAND, THE FEDERAL  
POLITICAL DEPT REPLIED ON APR 18 THAT IT CANNOT PER-  
MIT SUCH VOTING, EVEN IF IT IS DONE ENTIRELY BY MAIL,  
BY INDIVIDUALS, AND WITHOUT OFFICIAL INVOLVEMENT BY  
SPANISH EMBASSY OR CONSULATES IN SWITZERLAND. THE  
FPD HAS ALSO SAID SAME THING IN MORE GENERAL TERMS IN  
A CIRCULAR NOTE DATED APR 18 TO ALL DIP MISSIONS  
IN SWITZERLAND. (TEXT FOLLOWS IN SEPTEL.)

THE SPANIARDS HAVE CONFRONTED THE SWISS ON THIS  
ISSUE, AND WE SHALL AT SOME POINT HAVE TO CONSIDER OUR  
POSITION WITH RESPECT TO AMERICANS IN SWITZERLAND VOTING  
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PAGE 02 BERN 01717 220818Z

BY MAIL IN THE NEXT US ELECTION. WE BELIEVE THE USG  
SHOULD MAINTAIN A RESERVED POSITION, AND ADVISE AMERICANS  
TO DO SO UNTIL THE ISSUES ARE FURTHER CLARIFIED.  
IT MIGHT BE USEFUL IF THE LEGAL  
ADVISOR'S OFFICE COULD EXAMINE THE ASSERTION RE-  
GARDING INTERNATIONAL LAW MADE IN THE SWISS GOVTS  
CIRCULAR NOTE. END SUMMARY.

2. BACKGROUND: A) IN HELPING AMERICANS IN SWITZERLAND LAST FALL ESTABLISH THEIR ELIGIBILITY TO VOTE IN US ELECTIONS, AND IN ADVISING THEM ON PROCEDURES, THIS EMBASSY SKIRTED AROUND EDGES OF SWISS OFFICIAL POSITION REGARDING POLITICAL ACTIVITY BY FOREIGNERS IN SWITZERLAND, SPECIFICALLY WITH RESPECT TO ABSENTEE VOTING. NEITHER THE SWISS NOR WE CHOSE TO RAISE THE QUESTION OF RESIDENT AMERICANS VOTING BY MAIL IN NOV, 1976, ALTHOUGH IT WAS AS OBVIOUS TO SWISS AS TO US THAT LARGE NUMBERS INTENDED TO DO SO. "POLITICAL ACTIVITY" BY FOREIGNERS IN SWITZERLAND IS FORBIDDEN BY SWISS LAW.

B) THE SPANIARDS ASKED OFFICIALLY WHETHER THEIR NATIONALS COULD VOTE BY MAIL IN CONNECTION WITH THEIR PREPARATIONS LAST FALL FOR A NATIONAL REFERENDUM, AND WERE TOLD "NO." THE SPANISH EMBASSY IN BERN WAS FORCED, AS A RESULT, TO RETRACT NOTICES IT HAD PLACED IN SWISS NEWSPAPERS ADVISING EXPATRIATE SPANIARDS OF THE PROCEDURE TO BE FOLLOWED IN BALLOTING BY MAIL IN THE SPANISH REFERENDUM.

C) WE HAVE FOUND NO SPECIFIC PROHIBITION AGAINST VOTING BY FOREIGNERS IN SWITZERLAND BY MAIL. IN ANSWERING INQUIRIES FROM VARIOUS EUROPEAN EMBASSIES ABOUT VOTING, AND IN PARTICULAR WHEN TELLING THE SPANIARDS THEY COULD NOT VOTE BY CONFIDENTIAL

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PAGE 03 BERN 01717 220818Z

MAIL, THE FEDERAL POLITICAL DEPT TOOK ITS STAND ON THE BASIS OF A FEDERAL COUNCIL REPORT TO PARLIAMENT DATED MAR 3, 1975, WHICH DISCUSSED THE PROS AND CONS OF PERMITTING EXPATRIATE SWISS RPT SWISS TO VOTE IN SWISS ELECTIONS. THE FEDERAL COUNCIL'S REPORT CONCLUDED THAT PERMITTING EXPATRIATE SWISS TO VOTE IN SWISS ELECTIONS WITHOUT RETURNING TO SWITZERLAND COULD SET A RECIPROCITY PRECEDENT FOR FOREIGNERS IN SWITZ WANTING TO DO THE SAME THING IN THEIR NATIONAL ELECTIONS. THE COUNCIL CONCLUDED THAT EXPATRIATE SWISS SHOULD NOT BE PERMITTED TO VOTE BY MAIL, OR BY ANY OTHER MEANS OUTSIDE SWITZERLAND. THIS OPINION OF THE FEDERAL COUNCIL HAS BEEN INCORPORATED INTO SWISS LAW AS OF JANUARY 1, 1977.

3. DISCUSSION: A) THE SPANIARDS HAVE TAKEN THE LEAD IN THIS MATTER AND WE MUST PERFORCE NOW RIDE ALONG FOR TIME BEING WITH WHAT HAPPENS TO THEM. SWISS ARE NOT GOING TO PERMIT AMERICANS TO VOTE BY

MAIL IF THEY DO NOT PERMIT SPANIARDS TO DO SO, ALTHOUGH WE SUSPECT THAT SWISS IN THEIR HEARTS WOULD BE WILLING TO PUT US IN A DIFFERENT CATEGORY IF THEY COULD FIGURE OUT HOW TO DO IT. THERE ARE LARGE NUMBERS OF POLITICALLY VOLATILE SPANIARDS IN SWIZERLAND, AND THE SWISS MAY FEEL THAT NO MATTER WHAT ASSURANCES THEY RECEIVE FROM SPANISH EMBASSY, UNDESIRABLE POLITICAL ACTIVITY IN SPANISH COMMUNITY COULD ACCOMPANY BALLOTING. THE SWISS PROBABLY ALSO FEAR THAT COMMUNIST AND OTHER ITALIAN LEFTIST LEADERS WOULD ASSERT THE RIGHT TO SEND ELECTORAL PROPAGANDA AND PERHAPS EVEN HOLD ELECTORAL MEETINGS TO MAKE THEIR CASE TO THE HUNDEREDS OF THOUSANDS OF THEIR COMPATRIOTS WHO LIVE AND WORK IN SWITZERLAND.

B) A DISTINCTION COULD BE MADE BETWEEN VOTING BY GOING TO AN EMBASSY IN SWITZERLAND AND  
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PAGE 04 BERN 01717 220818Z

DROPPING A BALLOT IN A BOX (WHICH IS WHAT MUST BE DONE BY NATIONALS OF SOME EUROPEAN COUNTRIES), AND VOTING BY MAILING A LETTER CONTAINING A BALLOT. WE UNDERSTAND FROM OUR SPANISH EMBASSY COLLEAGUES IN BERN THAT THEY ARE RECOMMENDING TO MADRID THAT SPANISH GOVT TAKE SUCH A POSITION, AND CHALLENGE THE SWISS RIGHT, UNDER INTERNATIONAL LAW, TO PREVENT BALLOTING BY MAIL, IF UNACCOMPANIED BY "POLITICAL ACTIVITY" IN OTHER FORMS.

C) WE SHALL ADVISE AMERICANS IN SWITZERLAND TO BE RESERVED ABOUT THIS ISSUE, WHICH IS FOR MOST OF THEM ACADEMIC UNTIL 1978. THE DECISION OF THE FEDERAL COUNCIL NOT TO PERMIT EXPATRIATE SWISS TO VOTE UNLESS THEY RETURN TO SWITZERLAND IS NOT POPULAR IN CERTAIN QUARTERS, SPECIFICALLY IN THE FPD ITSELF, WHOSE MEMBERS ARE DISENFRANCHISED WHILE ABROAD. LAST DEC 6 SEVERAL MEMBERS OF PARLIAMENT QUESTIONED THE FEDERAL COUNCIL'S POSITION WITH RESPECT TO SPANISH VOTING. WE DO NOT RECOMMEND US ACTION FOR THE PRESENT. IT MIGHT BE USEFUL HOWEVER IF LEGAL ADVISORS OFFICE COULD CONSIDER WHETHER THERE ARE PRECEDENTS OR OPINIONS IN INTERNATIONAL LAW WHICH CLARIFY OR THROW LIGHT ON THE ASSERTION IN THE SWISS CIRCULAR NOTE OF APR 18 THAT "IN INTERNATIONAL LAW, NO COUNTRY IS ASKED TO TOLERATE SUCH VOTING PROCEDURES ON ITS OWN SOIL".  
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